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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,151	08/15/2000	Marcus H. Pendergrass	28549-165555	1602

26694 7590 03/18/2004

VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP  
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WASHINGTON, DC 20043-9998

EXAMINER

PHU, PHUONG M

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/638,151

Applicant(s)

PENDERGRASS ET AL.

Examiner

Phuong Phu

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,8-16,22,23,29,30,34,37-45,51,52 and 58 is/are rejected.
- 7) ☒ Claim(s) 2-4,6,7,17-21,24-28,31-33,35,36,46-50 and 53-57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is responsive to the Amendment filed on 2/13/04.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 5, 8-16, 22, 23, 29, 30, 34, 37-45, 51, 52 and 58 are rejected under 35 U.S.C. 102(e) as being anticipated by Rybicki et al (6,212,230), previously cited.

As per claim 1, see figures 1, 8 and 13, and col. 14, line 7 to col. 16, line 65, Rybicki et al discloses a method and associated system (figure 8) comprising:

step/means (112) for specifying pulse characteristics relative to at least one reference (e.g., clock 54, positions of pulses relative to the position of the instant frame, pulse-widths of pulses, etc) (see figures 8); and

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step/means (16) for applying a code (data 64) for specifying pulse characteristic relative to the at least one reference to generate a waveform (120) with said pulse characteristic for being transmitted on a channel (32) (see figure 1) wherein the frequency of said channel is inherently defined based on the frequency of said waveform. In another word, step/means (16), in generating said waveform, takes part in defining the frequency of the channel.

As per claim 30, see figures 1, 8 and 13, and col. 4, line 33 to col. 5, line 18, col. 14, line 7 to col. 16, line 65, Rybicki et al discloses a system (figure 1) comprising a transmitter (10) and a receiver (12) wherein the transmitter and the receiver employ a code (data 64) (see figure 8) which specifies pulse characteristics relative to at least one reference to generate a waveform (120) with said pulse characteristic for being transmitted on a channel (32) (see figure 1) wherein the frequency of said channel is inherently defined based on the frequency of said waveform.

As per claims 5 and 34, Rybicki et al discloses that said at least one reference is a characteristic value or a given pulse (e.g., pulse width of a given pulse (see figure 13).

As per claims 8-10 and 37-39, in Rybicki et al, pulse characteristics can be positions of pulses relative to the position of the instant frame, pulse-widths of pulses (see figure 13).

As per claims 11-14 and 40-43, Rybicki et al discloses that the code is a source code (see figure 8).

As per claims 15, 16, 22, 23, 29, 44, 45, 51, 52 and 58, Rybicki et al discloses that the code is generated using a method (see figure 8).

***Allowable Subject Matter***

4. Claims 2-4, 6, 7, 17-21, 24-28, 31-33, 35, 36, 46-50 and 53-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed on 2/13/04 have been fully considered but they are not, in part, persuasive.

Applicant's argument with respect to the objection on Specification is render moot since a new copy of Specification has been submitted to overcome the objection.

Applicant's argument with respect to the rejection, under Double Patenting, as being double patenting with the application 09/591.691, is render moot since the application 09/591.691 has been abandoned.

Applicant's argument with respect to the rejection, under 35 USC 112, second paragraph, to claims 17-21, 24-28, 46-50 and 53-57, is render moot since the claims have been amended to overcome the rejection.

Applicant's argument with respect to the rejection, under 35 USC 102(e), to claims 1 and 30 is not persuasive. The claims, after being amended, are deemed still not patentable over Rybicki et al with reasons set forth above in the corresponding rejection.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Phu whose telephone number is 703-308-0158. The examiner can normally be reached on M-F (8:30-6:00) First Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on 703-306-3034. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuong Phu  
Primary Examiner  
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*Phuong Phu*

Phuong Phu

3/4/04

**PHOUNG PHU  
PRIMARY EXAMINER**